



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: SeaSpace

File: B-241564

Date: February 15, 1991

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James K. White, Esq., Department of Commerce, for the agency.
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of the General Counsel, GAO, participated in the preparation
of the decision.

DIGEST

1. Protest is sustained where cost/technical tradeoff is based on flawed technical evaluation.
2. Discussions were prejudicially unequal where, during discussions, agency advised awardee of availability of upgraded, higher performance computer which awardee subsequently offered to provide, and which was deemed a significant technical advantage in the selection of the awardee, but failed to advise other offerors, including the protester, of its desire for higher performance computer and solicitation gave no reasonable indication that agency wanted this higher level of performance.

DECISION

SeaSpace protests the National Oceanic and Atmospheric Administration's (NOAA) award of a contract to Global Imaging, Inc. under request for proposals (RFP) No. 52-ABNW-0-00072. SeaSpace contends that the agency evaluated competing proposals improperly and engaged in improper discussions.

We sustain the protest.

The solicitation was for the acquisition of a high resolution picture transmission (HRPT) image processing system (HIPS) to be used by the Alaska region of the National Weather Service for processing data obtained from polar-orbiting meteorological satellites for its weather forecast and warning program. The solicitation contemplated the award of a firm, fixed-price contract for 1 year, with four 1-year options for certain maintenance services.

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Offerors were instructed to submit separate technical and cost proposals. The RFP advised that technical proposals would be evaluated on the basis of their responsiveness to the requirements of the solicitation and their explanation of how the requirements would be met. The RFP stated that technical quality was substantially more important than price, and offerors were advised to "note that the award may not be made to the lowest priced offer"; however, they were also cautioned that "the award will not necessarily be made for technical capabilities that appear to exceed the government's minimum requirements." Award was to be made to the responsible offeror whose conforming offer was determined most advantageous to the government, cost and other specified factors considered.

The RFP set forth, in section M, the five evaluation factors that the source selection advisory board (SSAB) would use to evaluate the proposals. These factors would be of equal weight in the evaluation of the technical proposals.

The evaluation factors were as follows:

1. Offeror must demonstrate that proposed HIPS downlink station will produce output products defined in the Statement of Work (SOW) within half-hour allotted time period after receipt of data.
2. Offeror must demonstrate that proposed HIPS downlink station is already in an operational environment or is capable of working in an operational environment.
3. Offeror must demonstrate that proposed HIPS downlink station will function in an Alaskan type cold weather environment.
4. Offeror must demonstrate that the HIPS downlink station is automatic up to 7 days with little or no man interaction.
5. Offeror must demonstrate flexibility of the HIPS downlink station to accommodate future add-ons such as storage capacity, monitors, additional workstations and software.

Nine firms submitted proposals in response to the RFP. The agency formed a seven-member SSAB, which reviewed and scored the technical and cost proposals. All nine proposals were initially found to be technically acceptable, but five of these were rejected as having unacceptably high prices.

SeaSpace and Global were among the four offerors whose proposals remained in the competitive range. Global had submitted the highest price and had received the highest score for its technical proposal (2,320 points out of a total possible score of 3,500); SeaSpace had the lowest price (which was less than half Global's price) and the lowest technical score (2,260).

NOAA submitted written discussion questions to these four firms, who revised their offers in response. The SSAB rescored the revised proposals, and requested best and final offers (BAFOs). Global was given a revised technical score of 2,660, and SeaSpace's score was increased to 2,280. The four firms submitted BAFOs. The SSAB determined that the minor changes submitted in the BAFOs did not merit rescoring and prepared its final report.

When the RFP was developed, the agency determined that technical quality would count four times as much as price in each proposal's final score. The 4:1 technical/cost ratio was achieved in the total point score by giving the low offer 875 points (representing 1/4 of the 3,500 possible technical points) for cost. Higher-priced offers were given proportionately lower cost points. Global's price was approximately double that of SeaSpace which submitted the low offer. When SeaSpace's technical score was added to the 875 points that the firm received for offering the lowest price, its total was 3,155. Global's technical and cost points added up to a total of 3,045.

The SSAB recommended award to Global in the final report it prepared for the source selection official (SSO), notwithstanding SeaSpace's higher total point score. The contracting officer, acting as the SSO in this case, reviewed the SSAB's report and selected Global, determining that Global's technical superiority justified paying the higher price. In making her finding that Global's technical superiority was worth paying a substantial price premium, she relied on the following technical advantages identified in the SSAB report: (1) optical disk drive (for long term archive data storage) instead of the cassette cartridge proposed by SeaSpace which was considered not as reliable as the optical disk; (2) a satellite data base management system that had utility in other national weather system databases; (3) a more versatile graphics software package; (4) 11-day versus 7-day unattended operation; and (5) computer workstations that were more powerful than those offered by SeaSpace. NOAA awarded the contract to Global on September 20. When SeaSpace was notified of the award, it requested and received a debriefing. This protest followed on October 5.

SeaSpace contends that NOAA's evaluation of technical proposals was improper because the agency gave credit for certain unstated evaluation criteria in some instances, and in other instances incorrectly or inconsistently evaluated the information provided in competing proposals. We find that the technical evaluation was flawed.

In considering protests against an agency's evaluation of proposals, we will not evaluate the proposals anew and make our own determinations as to their acceptability or relative merits. See Technical Servs. Corp., B-216408.2, June 5, 1985, 85-1 CPD ¶ 640. However, we will examine the record to determine whether the evaluation was fair and reasonable and consistent with the evaluation criteria. Bendix Field Eng'g Corp., B-219406, Oct. 31, 1985, 85-2 CPD ¶ 496.

The SSO states that Global's system's ability to operate automatically for 11 days was a technical advantage. As stated above, one of the five evaluation factors called for offerors to demonstrate the station's ability to operate automatically for "up to 7 days with little or no man interaction." This evaluation factor was based on the statement of work which required unattended operation of enumerated routine tasks for periods up to 7 days. This factor called for a precise level of performance. SeaSpace's proposal stated that its system could be scheduled to operate "as far into the future as desired," and that typically this was done for 1 week in advance. SeaSpace stated in its offer that its system was capable of unattended operation for periods of up to 7 days or more for the routine operations enumerated in the RFP. Global's proposal stated that its data collection could run completely unattended for 11 days. Although both proposals met the RFP requirement, Global's score for this factor was 100 points higher than SeaSpace's, apparently recognizing Global's exceeding of the requirement as a technical advantage. Although the contracting officer, in the agency report, argues that Global did not receive extra points for promising automatic operation for up to 11 days, the SSAB's report and SSO's source selection summary in fact cite this as one of the technical advantages that supported finding Global's proposal superior.

We find no basis under the evaluation factor for the awarding of higher points to a system that exceeded the stated requirement of "up to 7 days." Moreover, the agency never inquired as to the precise capability of SeaSpace's system which offered 7 days or more, and therefore the record shows SeaSpace potentially offered the equivalent period of operation. Under these circumstances, we do not think there was a reasonable basis for scoring Global 100 points higher than SeaSpace for this factor or for finding, under the

evaluation language, that Global's proposal offered a technical advantage under the evaluation scheme.

Another alleged technical advantage identified was that Global offered an optical disk for archiving, that is, storing the data for subsequent recall. The RFP, as revised by amendment, called for long-term archiving of data: "Offerors are given the option to offer [their] solution for archival; tape, disk, etc. The most popular media at this time is the use of 8 mm cassette" [i.e., digital tape]. Further, the revised RFP expressly provided that "this archival [need] is not part of the unattended operation." The SSO apparently believed that Global's offer rated higher because it offered an optical disk for archiving, which she contends is "a more reliable system than digital tape, the system offered by SeaSpace." However, in response to the agency's request by amendment for additional optional archive functions, SeaSpace offered the optical disk as an option for their proposed computer workstations and specifically provided the government the option of including one or more such optical disk subsystems with the initial order to SeaSpace. Given the fact that SeaSpace offered the disk as an option, and stated that it was available for use on its workstations, we fail to see how Global's offer to supply the optical disk could be considered a technical advantage without evaluation of SeaSpace's optional offer.

Global's offer also was found superior and rated higher based on the superior computer workstation it offered. Its proposed upgraded workstation, a new line of Hewlett Packard equipment first offered after discussions, was found to be superior in performance with greater flexibility and greater compatibility with other systems. Under the two factors where the computer offered had the most relevance, Global's scores increased significantly. Under factor one, the ability to produce output products defined in the RFP within one half-hour of receipt of data, Global doubled its initial score (300 to 600 points), and under factor five, flexibility of system for future add-ons, it gained 40 points. SeaSpace increased a total of 20 points under these two factors after discussions.

Here, we find that Global's superiority in these areas resulted primarily from prejudicially unequal treatment in discussions. Each of the four firms in the competitive range was asked to furnish technical and cost information regarding a change in the antenna placement under the contract, and to include a price for an additional workstation. The agency asked no further technical questions of SeaSpace. However, while the record shows that SeaSpace's initial offer was found to meet the technical requirements, in fact, the evaluators noted that SeaSpace offered "limited workstation capability." Because the protester's price was so low, it was asked to

verify its prices and was questioned about a possible omission from its total price.

Global was asked the same standard questions as the other firms. In addition, it was given four "specific questions." In these, the agency asked the firm to clarify its proposed system's BER (bit error rate), to provide the dB strength of its signal when the antenna was at a different angle than the one Global had discussed in its proposal, and to clarify a cost matter. The remaining "question" appeared as follows: "The government has knowledge that HP [Hewlett Packard] will be introducing an upgraded workstation. Was this system considered when preparing your initial proposal?"

Global's response was that it had not considered these new workstations because they only became available on the Federal Supply Schedule after initial offers were submitted. Global stated that after evaluation of this upgrade, Global now believed these machines offer outstanding performance. These workstations were proposed at essentially the same price as those initially offered. In order for discussions in a negotiated procurement to be meaningful, contracting agencies must furnish information to all offerors in the competitive range as to the areas in which their proposals are believed to be deficient so that offerors may have an opportunity to revise their proposals to fully satisfy agency requirements. Proprietary Software Sys., B-228395, Feb. 12, 1988, 88-1 CPD ¶ 143. The government does not satisfy its obligation to conduct meaningful discussions by conducting prejudicially unequal discussions. E. H. Pechan & Assocs., Inc., B-221058, Mar. 20, 1986, 86-1 CPD ¶ 278.

The evaluation factors presented in the RFP gave offerors little guidance on the basic issue of how powerful and flexible a system the agency desired beyond a system meeting the minimum requirements stated in the RFP. We think this discussion question singled out one offeror--Global--for notice of the agency's apparent preference for a more powerful computer, that is, one capable of greater performance and flexibility than that contemplated by the RFP initially. In our view, this was prejudicial to SeaSpace.

The contracting officer states in the agency report that "the major difference between SeaSpace and Global was in computers." Further, the contracting officer points out that "Global offered the state-of-the-art HP9000/433 computer, which is more expandable, flexible and compatible than the Sun computer offered by SeaSpace. This was a technological advantage for Global and was reflected in the SSAB score." This upgraded computer resulted in a substantial increase in points for Global on reevaluation. We do not know how SeaSpace might have revised its offer, had it been advised of

the type of enhanced computer performance the agency sought. We think that this failure to discuss its needs more precisely with SeaSpace was particularly prejudicial in light of the fact that the agency's initial evaluation of SeaSpace noted the limited capability of SeaSpace's workstation.

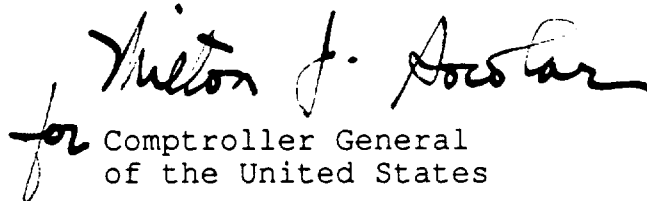
Although the agency report at one point characterizes Global's upgrading of computers in its BAFO as having been made "on Global's own," we cannot conclude from the record before us that the agency's discussion question was not instrumental in this change. In this connection, we note Global's statement in response to the discussion questions that it had not considered the HP 400 series workstations when it prepared its initial proposal, but that it now had evaluated them and had revised its offer to include them.

Since the choice of computers represented a substantial difference between the two proposals, and since the agency conducted unequal discussions on this point (favoring Global), we find that this prejudicial treatment tainted the selection decision.

The protest is sustained.

Suspension of contract performance was not required under the Competition in Contracting Act, 31 U.S.C. § 3553(d)(1), because the protest was filed in our Office more than 10 days after the award was made. Since significant performance has already taken place under the contract, it is not feasible for us to recommend that the agency terminate Global's contract and reevaluate the proposals. However, since the agency's improper actions deprived the protester of a fair opportunity to compete for the award, we find that SeaSpace is entitled to recover its proposal preparation costs. 4 C.F.R. § 21.6(d)(2) (1990). SeaSpace is also entitled to the cost of filing and pursuing its protest. 4 C.F.R. § 21.6(d).

The protest is sustained.


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of the United States